



Serving the Iowa Legislature

IOWA LEGISLATIVE INTERIM CALENDAR AND BRIEFING

August 23, 2012

2012 Interim No. 4

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Iowa Legislative Interim Calendar and Briefing is published by the Legal Services Division of the Legislative Services Agency (LSA). For additional information, contact: LSA at (515) 281-3566.

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Tuesday, September 11, 2012

Administrative Rules Review Committee

9:00 a.m., Room 116, Statehouse

AGENDAS

INFORMATION REGARDING SCHEDULED MEETINGS

Administrative Rules Review Committee

Chairperson: Senator Wally Horn

Vice Chairperson: Representative Dawn Pettengill

Location: Room 116, Statehouse

Date & Time: Tuesday, September 11, 2012, 9:00 a.m.

Contact Persons: Joe Royce, LSA Counsel, (515) 281-3084; Jack Ewing, LSA Counsel, (515) 281-6048.

Agenda: Published in the Iowa Administrative Bulletin:

<http://www.legis.state.ia.us/aspx/BulletinSupplement/bulletinListing.aspx>

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ADMINISTRATIVE RULES REVIEW COMMITTEE

August 14, 2012

Chairperson: Senator Wally Horn

Vice Chairperson: Representative Dawn Pettengill

PUBLIC SAFETY DEPARTMENT, *Inspection of Electrical Work on Farms*, 661-551.2, SELECTIVE.

Background. The state electrical board licenses electricians and requires inspection for “[a]ll new electrical installations for *commercial* [emphasis added] or industrial applications.” Rule 661-551.2(1) currently in effect, states in part: “An electrical installation on a farm ... shall require a state electrical permit, and may be subject to a state electrical inspection...” The Commissioner of Public Safety has issued an order which terminated mandatory inspections of farm facilities “in order to more efficiently allocate resources of the State.”

Commentary. Agency representatives stated that electrical wiring on farms presented no threat to the public health, safety, and welfare and that the expense of mandatory inspections was not justified. The representatives also questioned whether the statute requires farm inspections. These sentiments were echoed by several stakeholders who viewed the inspections as an unnecessary expense and a source of delay in the construction of farm buildings.

Several committee members expressed concern that the department’s action ignored a requirement imposed by statute. The members noted that there had been ample time to seek legislation to resolve this issue, but instead the department has simply refused to enforce the provisions of the rule.

Action. No action taken.

PROFESSIONAL LICENSING, *Sign Language Interpreters and Transliterators, Examinations*, 07/25/12 IAB, ARC 0228C, NOTICE.

Background. Iowa law requires that all persons providing interpreting services must be tested and licensed. Applicants may choose from several different tests. This rulemaking revises the tests required for persons who wish to be licensed as sign language interpreters and transliterators.

Commentary. Committee members noted that due to the difficulty of the tests, many people who formerly provided these services prior to the licensure requirements have been unable to pass the tests. Board representatives were unable to provide information of pass rates.

Action. No action taken, additional review on final adoption.

REGENTS BOARD, *Admission Requirements for State Universities*, 07/25/12 IAB, ARC 0220C, NOTICE.

Background. This rulemaking updates various admission requirements for the state’s public universities. The rulemaking also removes detailed admission requirements for the colleges at the University of Iowa, the Graduate College at Iowa State University, and the teacher education program at the University of Northern Iowa from the Administrative Code. The removed requirements are included in numerous print and online sources that are readily accessible to prospective students. Other technical changes are made as well.

Commentary. A board representative summarized the rulemaking. Committee members asked why the detailed admission requirements need to be removed from the board’s rules, even if they are readily available elsewhere. The representative explained that this would give the individual colleges more flexibility as they review their own standards. Members asked if these rule changes were intended to make the individual colleges independent of the board’s rules, and the representative said no. Members asked if these rule changes would allow individual colleges to change their admission standards without going to the board, and the representative said yes. Members suggested that having clear, specific admission standards in the rules would be a better approach, and expressed concern about the board granting too much deference to the colleges in the rulemaking process.

Members also expressed concern that language relating to reporting student misconduct is unclear and arbitrary. Members asked how the recent federal executive order relating to young illegal immigrants would affect these rules, and the representative stated that she did not know at this time.

A motion was made to review this rulemaking further at the committee’s September meeting. The motion carried.

Action. Further review at September meeting.

TRANSPORTATION DEPARTMENT, *Rest Area and Highway Helper Sponsorship Programs; Competition with Private Enterprise*, 07/11/12 IAB, ARC 0187C, ADOPTED.

Background. The department adopts two new clean-up programs for rest stops and highways. The rest area sponsorship program allows a person, a firm, or an entity to sponsor a rest area by providing a monetary contribution, in

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(Administrative Rules Review Committee continued from Page 3)

exchange for an acknowledgment sign on the main-traveled way of an interstate highway and an interior sign within the primary rest area building. The sponsors will provide the sign, which must measure 24 inches high and 48 inches wide. The department shall review the acknowledgment sign proposed by the sponsor; the acknowledgment will not contain an advertisement or a partisan endorsement.

The highway helper sponsorship program allows a person, a firm, or an entity to provide a monetary contribution to assisting in the funding of that service, in exchange for an acknowledgment sign on the main-traveled way of an interstate highway patrolled by the highway helper vehicles.

Commentary. A representative of the department explained the purpose of this rulemaking, which adopts these two programs for highways and rest stops in accordance with federal requirements. The representative explained that these programs will help defray the department's operating costs in this area. The sponsorships will be allotted through the RFP process. Committee members asked how much money these programs are expected to bring in. The representative was unsure, as no other state has implemented these programs yet, so there is no basis for an estimate. Members asked if \$2,500 is too low a starting bid for the value these programs could provide. The representative explained that is only the starting amount, and bids are expected to go higher, particularly in the most desirable locations.

Members expressed concern about the state granting more naming rights to state resources than it already has, and wondered how far such a trend might go. Members also expressed concern about whether sponsors inappropriate for such a setting might win a bid, and whether there might be free speech implications in denying such bids. A motion was made for a 70-day delay of this rulemaking. The motion carried. The rulemaking will receive further review at the committee's September meeting.

Action. Seventy-day delay. Further review at September meeting.

Next Meeting. The next regular committee meeting will be held in Committee Room 116 at the Statehouse, on Tuesday, September 11, 2012, beginning at 9:00 a.m.

Secretary ex officio: Stephanie Hoff, Administrative Code Editor, (515) 281-3355.

LSA Staff: Joe Royce, LSA Counsel, (515) 281-3084; Jack Ewing, LSA Counsel, (515) 281-6048.

Internet Page: <https://www.legis.iowa.gov/Schedules/committee.aspx?GA=84&CID=53>

LEGAL UPDATE

Purpose. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative affairs of recent court decisions, Attorney General opinions, regulatory actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. As with other written work of the nonpartisan Legislative Services Agency, although this briefing may identify issues for consideration by the General Assembly, nothing contained in it should be interpreted as advocating a particular course of action.

LEGAL UPDATE—JUVENILES SERVING LIFE SENTENCES

Filed by the United States Supreme Court

June 25, 2012

Miller v. Alabama

<http://www.supremecourt.gov/opinions/11pdf/10-9646.pdf>

Facts. Two separate cases were combined for purposes of appeal before the United States Supreme Court involving juveniles convicted of murder who were subsequently sentenced to mandatory life in prison without the possibility of parole. The first case involved a 14-year-old defendant who accompanied two other juveniles on a robbery of a store, and on the way to the robbery the defendant learned that one of the other juveniles was carrying a shotgun. During most of the robbery, the defendant stayed outside the store, but when the defendant entered the store the other juvenile carrying the shotgun shot and killed the store clerk. The defendant was later convicted of capital felony murder and aggravated robbery and sentenced to mandatory life in prison without possibility of parole. The second case also involved a 14-year-old defendant and a friend who beat the defendant's neighbor to death and set his trailer on fire after a night of drinking and drug use. The defendant was initially charged as a juvenile but the case was removed to

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(Legal Update—Juveniles Serving Life Sentences continued from Page 4)

adult court where the defendant was charged and convicted of arson and murder and sentenced to mandatory life in prison without the possibility of parole.

Issue. Does the prohibition of cruel and unusual punishment under the 8th Amendment to the United States Constitution forbid a sentencing scheme that mandates life in prison without parole for juvenile murder offenders.

Holding. The United States Supreme Court held that a mandatory life sentence without the possibility of parole for a juvenile who commits murder violates the prohibition of cruel and unusual punishment contained in the 8th Amendment to the United States Constitution. First, the Court reasoned categorical prohibitions on sentencing practices for juveniles already exist, such as the ban on a juvenile receiving the death penalty and the ban of a life sentence without the possibility of parole for an offense that did not involve a murder. The Court further reasoned that these categorical bans exist because a juvenile has less culpability than adult offenders. Under the ruling, the Court held that mandatory sentencing schemes prevent the Court from considering an offender's age, age-related characteristics, and the nature of the offender's crime. The State contended that a sentence of mandatory life in prison for a homicidal juvenile does not constitute cruel and unusual punishment under the 8th Amendment because 29 jurisdictions impose some form of mandatory life in prison for juveniles who commit murder. The Court's majority emphasized that the ruling does not categorically bar a juvenile who commits murder from serving a life sentence, but instead requires the jurisdiction to follow a process and consider an offender's youth and other circumstances prior to sentencing.

Dissent. The dissent opined that the majority opinion stands precedent on its head and emphasized that a life sentence without the possibility of parole is not unusual because many state legislatures have enacted such sentences and over 2,500 prisoners are currently serving such a sentence. The dissent also stated that the Court has long ago abandoned the original meaning of the 8th Amendment, holding instead that the prohibition of "cruel and unusual punishment" embodies the evolving standards of decency that mark the progress of a maturing society.

Impact on Iowa. Iowa currently has 38 offenders serving a life sentence for murder committed while the offender was a juvenile. Governor Branstad in response to the Miller case commuted all these sentences from a life sentence without the possibility of parole to a life sentence with the possibility of parole after serving 60 years of the sentence. The commutation was granted on the condition that the offender not be eligible for parole or work release before serving 60 actual years of the offender's sentence, with no credit for earned time.

LSA Monitor: Joe McEniry, Legal Services, (515) 281-3189.

LEGAL UPDATE—INSURANCE PRODUCERS' SCOPE OF DUTY—REVISITED

Filed by the Iowa Supreme Court

July 6, 2012

Pitts v. Farm Bureau Life Ins. Co. and Donald Schiffer

No. 11-0117, __N.W.2d__ (Iowa 2012)

http://www.iowacourts.gov/Supreme_Court/Recent_Opinions/20120706/11-0117.pdf

On review from the Iowa Court of Appeals

Factual Background. Plaintiff Michele Pitts (Michele) married Thomas Pitts (Thomas). At the time of their marriage, Thomas was paying child support for a daughter from a previous relationship and maintained a life insurance policy for her through defendant Farm Bureau Life Insurance Company (Farm Bureau). Thomas told his insurance agent, Donald Schiffer (Schiffer) to pay the first \$35,000 of insurance proceeds to his daughter with the balance, if any, going to Michele. Michele alleged that after Thomas's child support obligation ended, he told Schiffer to change the beneficiary designation so that Michele would receive all of the insurance proceeds. Michele alleged that both Thomas and Schiffer told her that this change was made. After Thomas died, Michele and her parents met with Schiffer who allegedly told her again that she would receive the full amount of the proceeds. Later, Michele was informed by Schiffer that in fact, Thomas's daughter would receive the first \$35,000 of the insurance proceeds and that Michele would receive the remaining \$74,000.

Procedural Background.

District Court. Michele filed a petition in district court alleging negligence and negligent misrepresentation against Schiffer, and naming Farm Bureau under a theory of respondeat superior. Michele's petition alleged that Schiffer was negligent in failing to change the beneficiary designation of the life insurance policy at Thomas's request and in repre-

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(Legal Update—Insurance Producers' Scope of Duty—Revisited continued from Page 5)

senting to Thomas and Michele that the designation had been changed. Michele alleged that as an intended third-party beneficiary of the insurance policy, Schiffer owed her a duty of care and was negligent in exercising that duty.

The district court granted the defendants' motion for summary judgment and dismissed the case on the basis that Thomas did not execute a written request to change the beneficiary designation as required by the insurance policy. The district court declined to address Michele's negligence claims.

Iowa Court of Appeals. On appeal, the Court of Appeals considered Michele's negligence claims and surveyed the legal landscape in Iowa concerning the scope of the duty of care owed by an insurance agent. The Court of Appeals found that in *Sandbulte v. Farm Bureau Mut. Ins. Co.*, 343 N.W.2d 457 (Iowa 1984), the Iowa Supreme Court (Court) held that insurance agents owe a general duty to "use reasonable care, diligence, and judgment in procuring the insurance requested by an insured" and that a greater duty could be owed "when the agent holds himself out as an insurance specialist, consultant, or counselor and is receiving compensation for consultation and advice apart from premiums paid by the insured."

In December 2010, in *Langwith v. Am. Nat'l Gen. Ins. Co.*, 793 N.W.2d 215 (Iowa 2010), the Court overruled *Sandbulte's* characterization of the scope of duty owed by an insurance agent to a client and instead held that the duty should be determined "based on a consideration of all the circumstances, the agreement of the parties with respect to the service to be rendered by the insurance agent, and whether that service was performed with the skill and knowledge normally possessed by insurance agents under like circumstances."

The Court of Appeals found that in April 2011, the holding of *Langwith* was expressly abrogated by the Iowa General Assembly with the enactment of Iowa Code §522B.11(7), to the extent that *Langwith* imposed higher or greater duties and responsibilities on insurance agents than those set forth in *Sandbulte*.

The Court of Appeals noted that the district court issued its ruling three weeks before the issuance of *Langwith*, pursuant to the duty of care principles enunciated in *Sandbulte*. Based on the facts of this case, the Court of Appeals found that Schiffer owed Thomas only the general duty of care articulated in *Sandbulte*. The Court found no authority for declaring a new independent duty of care owed by an insurance agent to Michele as an intended beneficiary of the life insurance policy and also declined to hold that such an intended beneficiary has a claim for negligent misrepresentation. For those reasons, the Court of Appeals upheld the dismissal of Michele's case by the district court. *Pitts v. Farm Bureau Life Ins. Co. and Donald Schiffer*, 807 N.W. 2d 296 (Iowa App. 2011). Michele sought and was granted further review by the Court.

Iowa Supreme Court—Issues on Further Review.

1. Whether a life insurance agent owes a duty of care to the intended beneficiary of a life insurance policy.
2. Whether a life insurance agent can be liable for negligent misrepresentation when the agent provides information to the insured and the intended beneficiary regarding the beneficiary designation listed on the life insurance policy.

Analysis and Holding.

Negligence Claim. The Court observed that the scope of duties an insurance agent owes his client has recently been the subject of litigation and legislation when the 1984 *Sandbulte* case was overruled in 2010 by the Court in the *Langwith* case, and when the *Langwith* case was then abrogated by the legislature in 2011 to the extent that *it* overruled *Sandbulte*, with the enactment of Iowa Code §522B.11(7). The Court found that those cases and the statute address what duties an insurance agent owes to the insured, not who the agent can be liable to when those duties are breached, which is the issue in this case.

The Court concluded that insurance agents and brokers owe a duty of care to third parties in limited circumstances. The Court held that an insurance agent owes a duty to the intended beneficiary of a life insurance policy in limited circumstances. A plaintiff asserting breach of that duty of care by an insurance agent must show that the plaintiff was the direct, intended, and specifically identifiable beneficiary of the policy, as well as the other elements of negligence. In looking at Michele's claim in this case, the Court concluded she had presented facts, if true, which would support her claim that Schiffer's negligence was the reason she was not the primary beneficiary of the entire policy. Thus, summary judgment on this claim was inappropriate.

Negligent Misrepresentation Claim. For this tort, the Court noted that past Iowa cases have held that only those who are in the business of supplying information to others can be liable for negligent misrepresentation. The Court concluded that Schiffer is among the class of defendants against whom an action for negligent misrepresentation may be brought. When Schiffer allegedly made the misrepresentations at issue in this case, he was acting as an insurance agent providing information regarding the identity of a beneficiary of a life insurance policy to both the insured and the

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(Legal Update—Insurance Producers’ Scope of Duty—Revisited continued from Page 6)

intended beneficiary of the policy. This information was provided in the course of his business, profession, or employment. Schiffer’s alleged misrepresentations to Michele were made in the course of his business and her reliance on those statements was foreseeable. Based on Michele’s claim, the facts alleged, if true, would support her claim that Schiffer negligently misrepresented who was the primary beneficiary on the life insurance policy. Summary judgment on this claim was also inappropriate.

Respondent Superior Claim. Michele’s respondeat superior claim against the insurer, Farm Bureau, cannot be resolved as long as Schiffer’s liability is unclear, so summary judgment on that claim was inappropriate as well.

Disposition. The Court reversed the decision of the district court, vacated the decision of the Court of Appeals, and remanded the case for further proceedings in district court.

Dissent. Three justices dissented on the basis, among other things, that the majority opinion created an unwarranted expansion of existing Iowa law by removing the current limitation that the intent to provide for the beneficiary must have been “expressed in” the written instrument. The dissent stated that the majority opinion recognizes a duty on the part of insurance agents that has not, until now, been recognized in Iowa. In addition, in 2011, the legislature “essentially froze the duties and responsibilities of insurance agents to those set forth in *Sandbulte*, which did not mention any duties to nonclients.”

LSA Monitor: Ann Ver Heul, Legal Services, (515) 281-3837.